

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

<b>WINTER GREENES JOINT</b>	:	<b>CIVIL ACTION NO. 1:08-CV-1480</b>
<b>VENTURE, LLC,</b>	:	
	:	<b>(Judge Conner)</b>
<b>Plaintiff</b>	:	
	:	
<b>v.</b>	:	
	:	
<b>PENNSYLVANIA DEPARTMENT</b>	:	
<b>OF ENVIRONMENTAL</b>	:	
<b>PROTECTION, MONTGOMERY</b>	:	
<b>TOWNSHIP, MICHAEL RIFE,</b>	:	
<b>WILLIAM T. COBLE, GREGORY</b>	:	
<b>A. WELLER, DEAN E. METCALFE,</b>	:	
<b>SR., RONALD L. HISSONG, JACK</b>	:	
<b>W. REED, JONATHAN W. PIPER,</b>	:	
<b>MICHAEL MCNULTY, FRANKLIN</b>	:	
<b>COUNTY PLANNING COMMISSION,</b>	:	
<b>WILLIAM A. BRINDLE, WILLIAM</b>	:	
<b>A. BRINDLE ASSOCIATES, INC., D.L.</b>	:	
<b>GEORGE &amp; SONS CONSTRUCTION</b>	:	
<b>CO., and OLIVER HOMES, INC.</b>	:	
	:	
<b>Defendants</b>	:	

## ORDER

AND NOW, this 1st day of September, 2009, upon consideration of plaintiff's motion (Doc. 101) for voluntary dismissal of less than all defendants and for remand, wherein plaintiff states that "settlement as to all parties except for Defendants Oliver Homes Inc. and D.L. George & Sons Construction Company has been reached," (Doc. 102 at 2), and that "[t]herefore, it is appropriate to dismiss the action as against all parties except D.L. George & Sons Construction Co. and Oliver Homes, Inc., and transfer those causes of action back to [the] Court of Common Pleas of Franklin County," (Doc. 101 ¶ 4), and it appearing that all defendants

concur in plaintiff's motion except defendant Oliver Homes, (see id. ¶ 5), and that no party filed a brief in opposition to the motion, and it further appearing that the above-captioned matter was removed from state court on August 6, 2008, (see Doc. 1), that the notice of removal invoked the court's federal question jurisdiction, (see id. ¶¶ 4-7), but that plaintiff's motion (Doc. 101) for voluntary dismissal requests that all federal question claims be dismissed, and the court concluding that dismissal of the settled claims will divest the court of subject matter jurisdiction,<sup>1</sup> whereupon remand is appropriate, see 28 U.S.C. § 1447(c) ("If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded."); see also Wis. Dep't of Corr. v. Schact, 524 U.S. 381, 391-92 (1998) (explaining that remand is warranted when a federal court lacks subject matter jurisdiction over the case); Twp. of Whitehall v. Allentown Auto Auction, 966 F. Supp. 385, 386 (E.D. Pa. 1997) (remanding case when the plaintiff's claim consisted "solely of state law claims between non-diverse parties"), it is hereby ORDERED that:

1. Plaintiff's motion (Doc. 101) for voluntary dismissal is GRANTED. See FED. R. CIV. P. 41(a)(2) (stating that "an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper"). The following defendants are DISMISSED from the above-captioned cause of action: (1) Pennsylvania Department of Environmental Protection, (2) Montgomery Township, (3) Michael Rife, (4) William T. Coble, (5) Gregory A. Weller, (6) Dean E. Metcalfe, Sr., (7) Ronald L. Hissong, (8) Jonathan W. Piper, (9) Michael McNulty,

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<sup>1</sup> The remaining claims sound in state contract and tort law. Plaintiff seeks relief from defendant D.L. George & Sons Construction, Inc. for negligence and breach of contract, (see Doc. 1, Cplt ¶¶ 225-32), and from defendant Oliver Homes, Inc. for breach of contract, (see id. ¶¶ 233-42).

(10) Franklin County Planning Commission, (11) William A. Brindle, and (12) William A. Brindle Associates, Inc.

2. The Clerk of Court is instructed to REMAND the above-captioned matter to the Franklin County Court of Common Pleas. See 28 U.S.C. § 1447(c).
3. The motions to dismiss (Docs. 13, 17, 22, 26, 38) are DENIED as moot.
4. The report and recommendation (Doc. 83) of the magistrate judge is REJECTED as moot.

S/ Christopher C. Conner  
CHRISTOPHER C. CONNER  
United States District Judge